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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1980 OF 2007

Smt. Swati Anil Sakpal,
At Targaon, Taluka Koregaon,
District Satara. ... Petitioner

Versus

1. State of Maharashtra,
through Law & Judiciary Dept.
Mantralaya, Mumbai.

2. Registrar General,
Birth, Death, Marriages
Registration, Maharashtra,
Mantralaya, Mumbai.

3. Registrar of Birth, Death,
Marriages Registration.

Taragaon, Taluka Koregaon,
District Satara. ... Respondents

Mr. Ramanaware D.D. for Petitioner.

Mr. P.P. Kakade, A.G.P. for Respondents.

CORAM: F.I. REBELLO &
R.M. SAVANT,JJ.
DATED: MARCH 23, 2007

ORAL JUDGMENT (Per F.I. Rebello,J.):

. Rule. Heard forthwith.

2. It is the case of the Petitioner that she was married to the deceased Anil Sakpal on 4.5.1999. The husband expired on 23.2.2006. The Petitioner thereafter applied for full time course for seats in D.Ed. courses reserved for widows. The Petitioner however, was called upon to produce the marriage

registration certificate. The Petitioner applied but considering Section 6 of the Maharashtra Regulation of Marriage Bureaus and Registration of Marriages Act, 1998, the same was refused. The Petitioner has therefore filed this petition to challenge the constitutional validity of Section 6 and also for other reliefs.

3. Section 6 of the Maharashtra Regulation of Marriage Bureaus and Registration of Marriages Act, 1998 reads as under :

> "6. Duty of husband to submit memorandum for registration of marriages (1) (a) : On solemnization of a marriage, it shall be the responsibility of the husband to present, within a period of ninety days fro the date of solemnization of the marriage, a memorandum in the prescribed form before the Registrar within whose jurisdiction the husband ordinarily resides or where either one of the parties ordinarily reside;
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> (b) the parties and three witnesses to the marriage shall appear in person before the Registrar and sign the memorandum;
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> (c) the memorandum shall be accompanied by

such fee and other documents as may be prescribed;

(d) the Registrar before whom the memorandum is presented shall, after verification of the identity of the parties and the witnesses in the ;prescribed manner, register the marriage in the register of marriages;

(e) on registration of the marriage, the Registrar shall issue a certificate of registration of marriage to the parties in the prescribed form.

(2) Any marriage which is not registered within the time limit specified in sub section (1), may be registered as provided in the said sub section, by the Registrar within whose jurisdiction the parties ordinarily reside, on submission of the memorandum within a period of one year from the date of the marriage along with such penalty, not exceeding rupees one hundred, as may be prescribed.

. Provided that, any marriage which is not registered as provided under this sub

section may, subject to the provisions of sub section (1) of section 12, be registered at any time as provided in sub section (1), after changing a penalty not exceeding rupees five hundred, as may be prescribed.

(3) Notwithstanding anything contained in this section, any marriage which is solemnized before the coming into force this Act and a period of not less than one year has elapsed since its solemnization, and which for any reason has not been registered, may be registered on presentation of a memorandum along with a penalty of one hundred rupees, in relaxation of any of the provisions of this section ;

Provided that, any marriage solemnized within a period of one year prior to the date of commencement of this Act, shall be registered in accordance with the provision of sub section (1), on payment of penalty of one hundred rupees."

4. Section 6, on a first reading seems to operate harshly, in case of widows and or for that matter married women. Under Section 6(1), the Statute caste a duty on the husband to register the

marriage. Sub Section (2) in the event the marriage is not registered, within the time limit specified by sub section (1), can be registered by following the procedure set out therein. The proviso further extends the time for registering the marriage. The proviso to Section 6(1) contemplates registration at any time on payment of penalty not exceeding Rs.500/-.

. In our opinion, though in terms of Section 6(1) it is the responsibility of the husband to register the marriage in terms of Section 6(1), Section 6(2) or for that matter proviso cannot be read to mean that it can only be done by the husband. The language used is "failure". On failure either of the parties to the marriage can apply for registration. This interpretation will serve the large interest of getting the marriage registered in the records as maintained under the Act. This provision will also save the constitutional validity of Section 6 which otherwise possibly will have to be struck down considering Articles 14 and 15 of the Constitution of India.

. We therefore, have no hesitation to construe Section 6(2) and the proviso, to mean that it is open to the wife/widow under the said provisions to apply for registration on failure by the husband

under Section 6(1) of the Act. Considering the construction which we are giving, it is not necessary consider the challenge to the vires of the said section.

5. Considering the above, it is not necessary to decide the said challenge. The Petitioner has annexed the copy of the death certificate of her husband issued by Thane Municipal Corporation. In our opinion, because the marriage was not registered in the registry can not deny the right of education to the Petitioner. The marriage is evidenced by the fact of death certificate which has been issued. Accordingly we direct Respondent No. 1 to treat the death certificate as an evidence of the marriage of the Petitioner with late Anil Sakpal and if otherwise eligible to allow the Petitioner to pursue the D.Ed. course. The authorities under the Act, if the husband does not apply within the time limit set out under Section 6(1) of the Act to permit registration under Section 6(2) as also to provide to the wife or widow on an application being made and the procedure to the extent it can be fulfilled, has been fulfilled. The rules made will have to be read in conformity with this interpretation.

. Rule made absolute accordingly. In the circumstances of the case, there shall be no order

as to costs.

(R.M. SAVANT,J.) **(F.I.REBELLO, J.)**